

OGC HAS REVIEWED.

13 May 1954

MEMORANDUM FOR: The General Counsel

SUBJECT : Disclosure of Classified Information to Members
of the Congress.

1. Earlier this week you mentioned to me an interest in one or more Federal criminal statutes which would be applicable to the instance of an employee of this Agency disclosing classified information to a member of the Congress. The situation posed was parallel to that allegedly involving the disclosure of classified information to Senator McCarthy by an Army officer, but is to be distinguished from this situation on the grounds of a CIA employee not being a member of the armed services.

2. Since our talk, I have been through Title 18 of the U. S. Code. The yield has not been fruitful. However, one or two provisions of possible use have been turned up. These are 18 USC 2071, "Concealment, removal, or mutilation generally," and 18 USC 793 (d) and (f), "Gathering, transmitting, or losing defense information." Copies of these sections are appended, and what I deem to be relevant language is underlined in red.

3. Section 2071 is interesting in that it prohibits the removal of "any record . . . paper, document, or other thing, filed . . . in any public office . . ." It prohibits such removal on the part of persons who either have or do not have custody of the document or paper in question.

4. Section 793, subsection (d) thereof, prohibits the communication, transmission, or attempted communication or transmission of any "document, writing . . . or note relating to the national defense, or information relating to the national defense" to "any person not entitled to receive it." In connection with this section, it is noteworthy that an element of a crime is not the "intent or reason to believe that the information is to be used to the injury of the United States." This intent is a part of the crimes described under subsections (a) through (c) of Section 793. Subsection (f) prohibits a person "being entrusted with or having lawful possession or control of any document . . . etc . . ." from permitting its removal or delivery through "gross negligence" and requires of such a person to report loss, theft, or abstraction to his superior officer in the event that he has knowledge of this illegal removal or delivery.

5. A troublesome phrase in both subsections is that of "any person not entitled to receive it." It can be argued that members of the Congress of the United States would be persons authorized to receive information of this general nature. Thus, in 18 USC 798, "Disclosure of classified information," subsection (c) specifically provides that "upon lawful demand" the information which is the subject matter of the section can be disclosed to the Senate or the House of Representatives. There is no such specific provision in Section 793. The question of what is "lawful" or "lawful demand" may restrict or extend the applicability of a statute in which it is incorporated. In passing, I note that Section 798 has to do with communication ~~of~~ intelligence exclusively and would have little applicability to the activities of this particular agency.

6. The search for legislation of the general type desired will be continued. However, I call your attention to the above should any sudden need arise for something to be sent to the Director's office covering this general subject matter.

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Office of General Counsel